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Attorneys for Defendant MIKHAIL FIKS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LIMO HOSTING, INC., a Florida corporation, **OLEG GRIDNEV**, an individual.

Plaintiffs,
v.

**MIKHAIL FIKS (aka "Mike Fiks") d/b/a
"FIXEDSITES.COM", an individual, and
DOES 1-10.**

Defendant.

CASE NO. 3:08-cv-02474-BZ

**DEFENDANT FIKS'S AMENDED
NOTICE OF HEARING OF MOTION TO
DISMISS COMPLAINT UNDER
12(B)(6)**

Date: October 8, 2008
Time: 10:00 AM
Ctrm: G, 15th Floor

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 21, 2008, Defendant Mikhail Fiks ("Fiks"),
3 noticed a hearing for July 11, 2008 before the Honorable Samuel Conti for a Motion to
4 Dismiss (the "Motion") (D.E. No. 5) Plaintiffs Limo Hosting, Inc. and Oleg Gridnev's
5 (collectively, "Plaintiffs") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).
6 On July 8, 2008, the Court took the noticed hearing off-calendar, stating that it intended
7 to decide the Motion without oral argument or appearance. Subsequently, and before the
8 Court issued its ruling on the Motion, this matter was reassigned to the Honorable
9 Bernard Zimmerman on August 15, 2008.

10 **PLEASE TAKE FURTHER NOTICE** that Fiks accordingly re-notices its Motion for
11 October 8, 2008, or as soon thereafter as the Motion may be heard by the Honorable
12 Bernard Zimmerman in Courtroom G on the 15th floor of United States District Court for
13 the Northern District of California, San Francisco Division, located at 450 Golden Gate
14 Ave., San Francisco, CA 94102.

15 This Motion seeks to dismiss the Complaint because: 1) Plaintiffs have not
16 pleaded secondary meaning of the LIMO HOSTING mark or Fiks's use thereof as
17 required for statutory and common law trademark infringement; 2) Plaintiffs have not
18 pleaded that their website contains protectable trade dress, and that their website is non-
19 functional; 3) Plaintiffs' claim for False Designation or Origin is not based on any
20 recognized cause of action and duplicates Plaintiffs' other causes of action; 4) Plaintiffs'
21 Complaint does not contain allegations that Fiks made statements disparaging the quality
22 of Plaintiffs' property as required to support a claim for trade libel; 5) Plaintiffs' Complaint
23 does not contain sufficient allegations about the relationship between Plaintiffs and third
24 parties to support interference claims; and 6) Plaintiffs' Section 17200 claim is purely
25 derivative of its other claims, and therefore cannot stand.

26 This Motion is based on Federal Rule of Civil Procedure Rule 12(b)(6), Fiks's
27 Memorandum of Points and Authorities filed on May 21, 2008 (D.E. No. 5), Fiks's Reply
28 in Support of Memorandum of Points and Authorities filed on June 27, 2008 (D.E. No.

1 12), all pleadings on file in this case, and such further evidence and arguments that may
2 be presented prior to or at the hearing on this Motion.

3 Dated: August 25, 2008

4 Kronenberger Burgoyne, LLP

5 By: _____ /s/
6 Deepa Krishnan

7 Attorneys for Defendant,
8 MIKHAIL FIKS

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